S.B. Civil Misc. Appeal No.956/2006

Bhera alias Bherulal and another.
vs.
Smt. Hansu Bai.

Date : 11.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. R Bhansali, for the appellants.
Mr. BL Choudhary, for the respondent.

- - - - -

At the request of learned counsel for the parties, this appeal is finally heard and decided.

The plaintiff/respondent filed the suit for cancellation of the sale deed against her husband Bhera (appellant no.1/defendant no.1) who is the vendor and against the vendee (appellant no.2/defendant no.2). The sale deed was executed by the plaintiff's husband for Araji No.666. According to the plaintiff, the plaintiff is deserted wife of defendant no.1 Bhera and she was deserted about 15 years ago. It is pleaded that defendant Bhera kept the land of khasra no.669, 673, 674 and 675 for the plaintiff's maintenance. In the trial court, the plaintiff prayed for injunction which was seriously contested by the plaintiff's husband and the vendor-purchaser of Khasra no.666.

The trial court after hearing both the parties directed the defendant no.1 to maintain status quo with respect to araji no.666 and further directed not to interfere with the

possession of the plaintiff over araji no.669 and 673. So far as the vendor/defendant no.2 is concerned, the trial court directed not to alienate araji no.666 during the pendency of the suit.

The grievance of the appellants is substantially against only relief granted by the trial court in favour of the plaintiff by which the trial court directed the defendant no.1 not to interfere in the possession of the plaintiff over araji no.669 and 673.

According to learned counsel for the appellants, there is no iota of evidence produced by the plaintiff to prove her possession over araji no.669 and 673 and, therefore, the trial court committed serious error of law as well as fact in granting injunction against the person in possession. It is also submitted that the alleged agreement is a fabricated document. Said document was never signed by the appellant no.1. It is also submitted that it is admitted case of the plaintiff that she is residing separate from the appellant no.1 – husband since last more than 15 years. Not only this but there is no reference of any written agreement in the plaint or in the injunction application by which the said lands were earmarked for plaintiff's maintenance who is not living with the defendant – husband since last 15 years.

Learned counsel for the respondent submitted that the lands of araji no.669, 673, 674 and 675 are small patches

only. The land of araji no.666 is 2 bighas 5 biswas which has been sold. Araji No.674 is khasra number of well, whereas araji no.669 and 673 are measuring only 17 biswas and 5 biswas respectively total 22 biswas i.e. 1 bighas 2 biswas only. It is submitted that out of income of these arajies, the plaintiff is getting the livelihood.

I considered the submissions of learned counsel for the parties and perused the facts of the case as well as the documents shown by the plaintiff.

It appears from the plaint as well as the injunction application that the plaintiff has not mentioned that there is any written agreement between the parties i.e. Plaintiff and her husband defendant Bhera, earmarking the land in question for maintenance of the plaintiff. The plaintiff in her plaint very categorically stated that she is residing separately from her husband since last 15 years. It appears from the order impugned that there is no mention how the Court reached to the conclusion that the plaintiff is in possession of arajies no.669 and 673. It appears from the copy of the agreement alleged to have been executed between the plaintiff and her husband that there is no mention of any date and the document is not even attested. Not only this, in the plaint, it has not been mentioned that said land was set apart for the maintenance of the plaintiff in the year 1995. It is not the case of the plaintiff as to when she got the land in lieu of maintenance, why she did not got the land mutated in her name for last 15 years. It

is true that the relationship of the vendor and the plaintiff is of husband and wife but that it is not sufficient for the purpose of granting injunction in a case where the plaintiff's claim of maintenance is not established in the court of law nor she could produce any evidence about her possession over arajies no.669 and 673.

In view of the above, the trial court without considering the relevant facts with respect to the possession of the property granted injunction against the admitted true owner of the property i.e. Plaintiff's husband which cannot be sustained.

Consequently, this appeal of the appellant is partly allowed and the order of the trial court dated 22.7.2005 directing the appellant no.1 not to interfere in the possession of the plaintiff over arajies no.669 and 673 is set aside. However, it is directed that no party shall alienate any of the arajies no.666, 669 and 673 during the pendency of the suit.

Since it is a dispute between the parties having such close relation of husband and wife, therefore, it will be proper to direct the court below to decide the suit expeditiously preferably within a period of one year from the date of receipt of this order, which may be filed by the appellant.

(PRAKASH TATIA), J.

S.Phophaliya